IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.A.No.454 of 1999

Date of decision 4.1.2007

State of H.P. Appellant

Versus

Piare Lal Respondent

Coram:

The Hon'ble Mr. Justice V.K.Ahuja, Judge.

Whether approved for reporting?[1] No.

For the appellant : Mr.Ashutosh Burathoki,
Addl. Advocate General.

For the respondent: Mr.Sanjeev Bhushan, Advocate.

V.K.Ahuja J.(Oral)

This is an appeal filed by the appellant-State of Himachal Pradesh against the judgment of the court of learned Additional Chief Judicial Magistrate, Hamirpur dated 10.2.1999, vide which the accused-respondent was acquitted of the charge framed against him under Section 61(1)(a) of the Punjab Excise Act as applicable to the State of Himachal Pradesh.

Briefly stated the facts of the case are that a police party headed by PW-6 SI Mehar Chand and consisting of PW-1 LHC Ravindra Devi and PW-4 ASI Sarwan Kumar intercepted the accused coming on a scooter and on receipt of a secret information. Five bottles of illicit liquor were recovered from the scooter being driven by the accused. A case was registered against the respondent. After investigation the challan was filed in the court and respondent was tried by the learned trial court, resulting in his acquittal.

I have heard Mr.Ashutosh Burathoki, learned Additional Advocate General for the appellant and Mr.Sanjeev Bhushan, learned counsel for

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[1] Whether reporter of local papers are allowed to see the judgment ? No.

the respondent and have also gone through the record of the case carefully.

The submissions made by the learned Additional Advocate General were that though the independent witness associated, namely PW-2 Jaswant Rai, has not supported the prosecution story, but the statements of official witnesses proved the guilt of the accused beyond any reasonable doubt. It was submitted that the statements of the official witnesses were not relied upon by the learned trial court on the basis of minor contradictions and infirmities in their statements as well as in the absence of independent corroboration. Thus it was submitted that the appeal is liable to be accepted and the findings recorded by the learned trial court are liable to be set aside.

On the other hand, Mr.Sanjeev Bhushan, learned counsel for the respondent had supported the impugned judgment for the reasons recorded therein.

On a perusal of the statements of the prosecution witnesses, it is clear that PW-1 Ravindra Devi, has stated that she was present along with other police officials and a scooter came which was intercepted and five bottles of illicit liquor without any label were recovered which were taken in possession by the police. She stated about the fact that the seal was given to PW-2 Jaswant Rai at that time, but did not state as to Jaswant Rai was associated i.e. before search of scooter or thereafter. PW-4 Sarwan Kumar, ASI also stated similarly. He also stated about the handing over of seal to Jaswant Rai but did not state as to when he was associated i.e. prior to search of the scooter or thereafter. PW-6 Mehar Chand the then S.H.O. has stated that he was present along with other police officials and they learnt that the accused was bringing illicit liquor in his scooter who was intercepted and on search the five bottles of illicit liquor were received which were taken in possession. He has stated that Jawant Rai, Nambardar was associated at that time. The learned trial court had not believed the testimony of PW-1 Ravindera Devi as well as

PW-4 Sarwan Kumar ASI since they had not specifically stated that PW-2 Jaswant Rai was associated before the search of the scooter was conducted by the Investigating Officer. Apart from this the prosecution had also examined PW-2 Jaswant Rai,Nambardar, the only independent witness associated at that time who has stated that he does not remember where he was called by the Police and who were the members of the raiding party. He further stated that when he went to the spot the scooter was already standing, meaning thereby that the scooter was not intercepted in his presence. He did not state if the seal was given to him and stated that he has no knowledge about the seal.

From the above discussion, it is clear that the statements of police officials as discussed were not believed by the learned trial court who gave the reasons also for not relying upon their testimony. The learned trail court has also observed that since many persons were coming and going at that time but none were associated and no efforts had been made by the prosecution to cite them as a witness. The only independent witness associated PW-2 Jaswant Rai, Nambardar has not supported the prosecution story. Thus the learned trial court did not believe the statements of official witnesses in view of the infirmities and contradictions in their statements and in the absence of the independent corroboration. The reasoning given by the learned trial court in disbelieving the prosecution version cannot be said to be perverse calling for any interference by this court and as such there is no merit in the appeal filed by the appellant which deserves to be dismissed and the same is dismissed accordingly. Bail bonds furnished by the respondent shall stand discharged forthwith.

January 4,2007(g) **(V.K.Ahuja), J.**